

REMARKS

Claims 1-10, 13-23, and 26-28 are pending and remain in the application.

Rejections under 35 U.S.C. § 103(a) over Schmidt, Brewer, and Chase

5 Claims 1-10, 13-23, and 26-28 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,546,554, to Schmidt et al. ("Schmidt"), in view of U.S. Patent No. 6, 219,787, to Brewer and U.S. Patent No. 7,240,107 to Chase-Salerno et al. ("Chase"). Applicant traverses.

10 The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness, which includes a clear articulation of the reasons or rationale why the claimed invention would have been obvious. MPEP 2142. Exemplary rationales to support a conclusion of obviousness are listed in MPEP 2143, although the list is not all-inclusive.

15 The rationale based on combining prior art elements according to known methods appears to have been applied. Therefore, to establish a *prima facie* case of obviousness under this rationale, the examiner has the burden of providing the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference; (2) a finding that one of ordinary skill in
20 the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately; (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and (4) whatever additional findings based on the *Graham* factual inquiries may be necessary, in
25 view of the facts of the case under consideration. MPEP 2143(A). If any of the findings cannot be made, this rationale cannot be used to support a conclusion that the claim would have been obvious. *Id.*

30 Claim 1 recites a checking mechanism to receive an installation predicate object comprising code from the service host system to determine availability of the network service software on the service host system and to verify prerequisites against a runtime environment through the service host system by testing

hardware and software components of the requesting system. Claim 14 recites receiving on the requesting system an installation predicate object comprising code from the service host system to determine availability of the network service software and to verify prerequisites against a runtime environment through the
5 service host system by testing hardware and software components of the requesting system. Claim 28 recites means for receiving on the requesting system, an installation predicate object comprising code from the service host system to determine availability of the network service software on the service host system and to verify prerequisites against a runtime environment through the
10 service host system by testing hardware and software components of the requesting system.

The Schmidt-Brewer-Chase combination fails to teach such limitations. Schmidt and Chase were discussed in detail in the Response to Office Action of December 24, 2009, which is herein incorporated by reference. Brewer discloses
15 securely downloading native code, which is stored with attributes and source code (Brewer, Abstract; and Col. 19, lines 42-43 and 61-64). A JAVA Bean is resident in a network server and acts as a wrapper for the native code (Brewer, Col. 20, lines 37-40). A host processor loads an applet containing the Bean and queries the Bean for a size of the native code, code type, and millions of instructions per
20 second required (Brewer, Col. 20, lines 34-43).

A determination regarding whether the intended processor has sufficient resources to run the code is made (Brewer, Col. 20, lines 43-47). If there are sufficient resources on the processor, the code can be installed (*Id.*). Therefore, Brewer teaches determining whether there are sufficient resources on a *hardware*
25 *processor* to run code, rather than testing, by an installation predicate object, the hardware and software components of a requesting system upon which the installation predicate object is executed. Additionally, Schmidt and Chase fail to remedy the shortcoming of Brewer.

Accordingly, a *prima facie* case of obviousness has not been shown with
30 respect to independent Claims 1, 14, and 28. Claims 2-10 and 13 are dependent on Claim 1 and are patentable for the above-state reasons, and as further

distinguished by the limitations therein. Claims 15-23 and 26-27 are dependent on Claim 14 and are patentable for the above-state reasons, and as further distinguished by the limitations therein. Withdrawal of the rejection is requested.


5 The prior art made of record and not relied upon has been reviewed by the applicant and is considered to be no more pertinent than the prior art references already applied.

10 Claims 1-10, 13-23, and 26-28 are believed to be in condition for allowance. Entry of the foregoing amendments is respectfully requested. Reconsideration of the claims, withdrawal of the finality of the Office action, and a Notice of Allowance are earnestly solicited. Please contact the undersigned at (206) 381-3900 regarding any questions or concerns associated with the present matter.

Respectfully submitted,

15

Dated: October 4, 2010

By: 
Krista A. Wittman, Esq.
Reg. No. 59,594

20

Cascadia Intellectual Property
500 Union Street, Suite 1005
Seattle, WA 98101

Telephone: (206) 381-3900
Facsimile: (206) 381-3999

25

Final OA 3 Resp